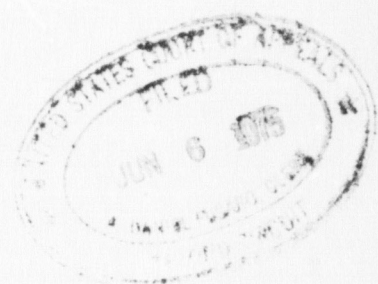


***United States Court of Appeals
for the Second Circuit***



REPLY BRIEF

75-5009



UNITED STATES COURT OF APPEALS
FOR THE 2nd CIRCUIT

-----X

In the Matter of

No. 75-5009

M.E. GREEN CO., INC.

BANKRUPT.

-----X

B

AFFIDAVITS TO RECONSIDER
APPELLANT'S MOTION TO
ADJOURN A HEARING BEFORE
THE SUBSTANTIVE MOTION
CALENDAR

ALEX L. ROSEN
Attorney for Appellant
Harry Silverman
225 Broadway
New York, New York 10007

June 6, 1975

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UNITED STATES COURT OF APPEALS
FOR THE 2nd CIRCUIT

-----x
In the Matter of

M.E.GREEN CO., INC.

BANKRUPT.
-----x

No. 75-5009

AFFIDAVIT TO RECONSIDER
APPELLANT'S MOTION
TO ADJOURN A HEARING
BEFORE THE SUBSTANTIVE
MOTION CALENDAR

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

ALEX L. ROSEN, being duly sworn, deposes and says:

1. I am an attorney admitted to practice before the Court and the attorney for petitioner, Harry Silverman, the appellant herein. I submit this affidavit to supplement my previous application for an adjournment.

2. As heretobefore described in my initial motion to adjourn (annexed hereto as Exhibit "A"), this matter was placed on the substantive motion calendar of June 10 by your deponent for the sole purpose of consolidating all motions well prior to the preparation of the appeal proper which is not scheduled to be argued until September 2, 1975. In my motion for an adjournment I indicated that the stay requested was merely a procedure by which to offer all parties the opportunity for such consolidation and not to protect or secure any benefit to the appellant in that the settlement agreement which is the basis for the compromise in issue effectively provides

for its own mandatory stay.

3. My motion for a short adjournment was predicated on the fact that there are four appellees to this appeal, each of which was likely to make cross-motions or serve other affidavits all of which would be taken under consideration at the hearing of June 10 and it would be impossible for your deponent to effectively answer them all within the time limitations imposed by Rule 27 (d) F.R.A.P.


In fact, late on Monday, June 2nd your deponent was served with cross-motions by Martin Szold, attorney for appellee Michael E. Green, primary of which was a motion to dismiss the appeal outright. Then on June 5th, the last day permitted by Rule 27 (d) F.R.A.P. for the filing of any papers, your deponent was served with an affidavit by Ralph Menapace of Cahill, Gordon & Reindel, the attorneys for the principal appellee in this action, the trustee in bankruptcy which supported the Szold motion and additionally opposed appellant's motion for a stay, thus confirming your deponent's fears that he would be foreclosed from submitting papers in opposition in accordance with the rules.

4. Your deponent who has recently been seriously ill, and has not yet fully recovered has but only two other attorneys in his office, one of whom is Jonathan Needle, a young man with very little experience in the practice of law, who has been,

forced to shoulder a heavy load in this extremely complex matter due to my condition, and who has been himself under considerable pressure this week due to pressure from his wife for a legal separation which was forced to settlement only yesterday, leaving him unavailable to my office much of the week. Opposing me are four law firms, the principle of which, Cahill, Gordon has almost unlimited manpower and the combination in concert of which is capable of preparation on short notice of any volume of paper work. I have been further handicapped by the absence due to illness of my permanent secretary for the past few weeks which condition still exists forcing me to work with different temporary help on almost a daily basis.

It is submitted that it is patently unfair and inequitable to deny an adjournment of the hearing on these various motions due to the impossibility of your deponent to adequately respond to same in accordance with the rules and particularly in light of the fact that these motions were actively initiated by any of the 'appellee's who now claim that this motion for adjournment is a dilatory tactic which is patently absurd in that these motions would not now even be before the court but for the initiative of your deponent who set in motion the machinery for expeditious determination of pre-appeal issues and should certainly have the opportunity to properly oppose the various motions and affidavits pursuant thereto.

Under these circumstances and the additional fact that no element of the Scheduling Order for this appeal would be effected by the motion herein it is respectfully requested that this Honorable Court reconsider petitioners motion for a two week adjournment and that said motion be granted.


ALEX L. ROSEN

Sworn to before me

this 6 day of June, 1975.

JONATHAN H. NEEDLE
NOTARY PUBLIC, STATE OF NEW YORK
No. 31-8108908
Qualified in New York County
Commission Expires March 30, 1976

UNITED STATES COURT OF APPEALS
FOR THE 2nd CIRCUIT

-----x
In the Matter of

No. 75-5009

M.E. GREEN CO., INC.

AFFIDAVIT

BANKRUPT.
-----x

STATE OF NEW YORK)

) ss.:

COUNTY OF NEW YORK)

JONATHAN NEEDLE, being duly sworn, deposes and says:

1. I am an attorney associated with Alex L. Rosen, attorney for Harry Silverman, petitioner appellant herein and I submit this affidavit in support of petitioner's motion for reconsideration of an adjournment previously denied and in answer to certain allegations made in the affidavit in opposition to the adjournment submitted by Martin Szold, attorney for appellee Michael E. Green.

2. Mr. Szold appears to infer that your deponent made certain representations to him in a telephone discussion in order to secure some particular benefit for petitioner and that Mr. Szold and the other attorneys to this appeal were being placed at a disadvantage by consenting to an extension of the District Court stay until June 10.

The truth of the matter is that as Mr. Szold is

well aware, and as petitioner's previous motion for an adjournment and the annexed affidavit of Alex L. Rosen describe, there was no necessity for a judicial stay at all and the consent by the attorneys for appellees to that end in no way effected the rights of any party to this appeal.

The telephone conversation was for the purpose of apprising Mr. Szold of petitioner's desire to consolidate all pre-appeal motions and a tentative date of June 10th was set with no certainty that it could be placed on the motion calendar for that date. Furthermore, Mr. Szold falsely states that a three way conversation took place between himself, Mr. Ralph Menapace of Cahill, Gordon & Reindel, attorney's for the appellee trustee and your deponent. While I was conversing with Mr. Szold he was conversing on a separate line with Mr. Menapace. Thus, it was not a three way conversation as represented by Mr. Szold.

The intention of your deponent was to give all parties an opportunity to make applications or motions to be brought on at the same time, with a fair opportunity for the petitioner to file papers in opposition.

Yet Mr. Menapace did not serve us with his affidavit until yesterday, June 5th, the day upon which by 12 noon pursuant to Rule 27 (d) F.R.A.P. all pre-hearing papers must be submitted, thereby foreclosing petitioner from answering same,

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this in direct violation of the purpose upon which the date for a hearing on all motions and affidavits was tentatively scheduled pursuant to the aforementioned telephone conversations and placing petitioner at a horrendous disadvantage.

In light of the foregoing, the obvious intention of the parties, the inequitable position of the petitioner caused by the conduct of the trustee's counsel and the intervening circumstances disclosed in the annexed affidavit of Alex L. Rosen, and the brief adjournment requested, petitioner's motion for adjournment should be granted.

Jonathan H. Needle
Jonathan H. Needle

Sworn to before me

this 6th day of June, 1975.

Joan C. Poulsen
JOAN C. POULSEN
NOTARY PUBLIC, STATE OF NEW YORK
No. 24-012045
Qualified in Kings County
Commission Expires March 30, 1976

UNITED STATES COURT OF APPEALS
FOR THE 2nd CIRCUIT

In the Matter of

M.E. GREEN CO., INC.

BANKRUPT.

No. 75-5009

MOTION TO ADJOURN

MOTION TO ADJOURN A HEARING BEFORE THE
SUBSTANTIVE MOTION CALENDAR AND THE
FILING OF OPPOSING PAPERS RELEVANT TO
SUCH MOTIONS AS MAY BE BEFORE THE COURT
IN ACCORDANCE WITH RULE 27 (d) F.R.A.P.

Petitioner, HARRY SILVERMAN, moves the Court to
adjourn for a period of two weeks the various motions in the
above indexed matter which are presently scheduled for Tuesday,
June 10, 1975, at 10:20 a.m. and as grounds therefor petitioner
respectfully shows:

1. That the initial motion of Petitioner which was
and
filed with the Court on May 29, 1975/placed on the substantive
motion calendar for June 10, 1975 was for a stay of the order
of the District Court which order affirmed a prior order by the
Bankruptcy Court approving a certain settlement and compromise.
This motion was not initiated in order to secure any benefit
for the petitioner but solely for the purpose of allowing appellees
well prior to the appeal proper an opportunity to make whatever
motions they might deem provident, which determination at an

early stage has the beneficial effect of apprising all the parties of any possible limitation in scope or any other effect upon the future course of the appeal.

The motion initiated by Petitioner had as its sole motivation the expeditious prosecution of this appeal to the mutual benefit of this Honorable Court and the parties alike. This is evident by virtue of the fact as previously described that in Petitioner's motion for Supersedeas/the settlement agreement which is the basis for the compromise in issue provides for its own mandatory stay of execution so long as it is subject to any appeal or further appeal, thus the supersedeas sought by Petitioner was merely the procedural device used by Petitioner for the purpose of motion consolidation.

It has become obvious to Petitioner that the purpose of Petitioner's motion cannot possibly be implemented by the presently scheduled date of June 10. One appellee has thus far filed three cross-motions against Petitioner which were served late Monday afternoon, June 2nd. Although these motions are patently spurious in nature, pursuant to Rule 27(d) F.R.A.P. Petitioner must file and serve papers in opposition by 12:00 noon of June 5th. Motions to dismiss appeals are not to be taken lightly no matter how lacking in merit.

Two days would appear to be insufficient time to prepare opposition papers of such import even in ordinary circumstances; but there is the likelihood that Petitioner may yet be served with additional motions by other of the appellees which would render preparation of papers in opposition by the required date a virtual impossibility.

It is obvious then, that there is good cause to adjourn these motions for two weeks so that any subsequent motions by appellees in addition to those previous mentioned may be properly opposed by appellant so that the Court may determine the future course of this appeal at that time, and so that the parties to the appeal can subsequently devote themselves to the basic issues upon which this Honorable Court will eventually make its determination upon the merits.

ALEX D. ROSEN
Attorney for Petitioner
Office and Post Office Address
225 Broadway
New York, New York 10007
212-227-1787

STATE OF NEW YORK)

SS:

COUNTY OF NEW YORK)

JOAN FOULSFY

being duly sworn,

deposes and says:

That deponent is not a party to the action; is over 18 years of age and resides at Brooklyn, New York.

That on the 4th day of June, 1975, deponent served the within Motion to Adjourn upon the following at their respective addresses by depositing same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Post Office within the State of New York:

CAHILL, GORDON & REINDEL
89 Pine Street
New York, New York 10005

SZOLD, SCHAPIRO & KOSTER
342 Madison Avenue
New York, New York

KURZMAN & FRANK
230 Park Avenue
New York, New York

ERWIN E. CORWIN
30 East 42nd Street
New York, New York 10017

Sworn to before me this

4th day of June, 1975

JOSEPH M. VETTER
Notary Public, State of New York
No. 21 830030
Qualified in New York County
My Comm. Expires March 31, 1976

